

FACILITATION OF INFORMAL CONSULTATIONS ON SPECIFIC SPS ISSUES

Submission by the United States

1. Article 12.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) provides that “[t]he Committee shall encourage and facilitate *ad hoc* consultations or negotiations among Members on specific sanitary and phytosanitary measures.” The United States recalls that during the negotiations of the SPS Agreement, the negotiating parties realized that there might initially be numerous disagreements between members on SPS issues when the new rules and disciplines came into force. At the same time, the parties also realized that many of these disagreements would not warrant the time and resources necessary for formal dispute settlement and might be more amicably resolved through informal consultations or negotiations with the aid of effective mediation. There was a consensus among the negotiating parties that the SPS Committee could serve a constructive role in facilitating resolution of many of these disagreements, and Article 12.2 was agreed for that purpose.
2. Article 12.2 empowers the SPS Committee to serve in the role of informal facilitator, but does not establish any requirements for this process. It provides a flexible and informal mechanism for resolving disagreements which does not in any way seek to duplicate the formal dispute system established for the WTO Agreements as a whole. Clearly, Article 12.2 is *not a prerequisite* to a party seeking formal dispute settlement nor does it prejudice any right or obligation of a party under the SPS Agreement or any other WTO Agreement.
3. The Committee has not seen a need, to this point, to discuss the procedural possibilities under Article 12.2. Clearly, any member is entitled to request that the Committee assist in the resolution of a disagreement. Article 12.2 further anticipates that the Committee would only facilitate consultations or negotiations upon the mutual agreement and consent of both parties. The United States is of the view that such consultations would occur in confidence entirely between the two parties, without disclosure to any other party. The Committee Chairperson, or the Chairperson’s designee mutually consented to, would provide whatever technical advice or mediation that might be helpful in aiding the parties to achieve a mutually acceptable resolution. All consultations or negotiations would be, in the words of the Article “*ad hoc*” — *i.e.*, the number, times and places or meetings, the methods of proceeding, *etc.* would be decided and mutually agreed by the parties to the consultation and the Committee mediator on a case-by-case basis.
4. It is the understanding of the United States that there have been very few instances since the WTO Agreements came into force in which a member has attempted to utilize the Article 12.2 consultative mechanism. Where Article 12.2 has been invoked, however, it has been successful in helping the parties to resolve their differences and avoid the more lengthy, contentious and divisive formal dispute settlement.

5. It is the perception of the United States, after discussions with various delegations, that Article 12.2 is not well understood or widely appreciated among WTO members. It is our view that there would be greater recourse to Article 12.2 if members had a better realization of the informal nature of the process and the availability of the Committee to serve as dispute facilitator. The United States considers that this could be one of the more important functions that the SPS Committee serves.

6. Recalling that Article 12.2 expressly calls for the Committee to “encourage” *ad hoc* consultations and disputes, the United States requests that the Committee Chairperson take a proactive role in publicizing to the members the availability of the Committee to participate in consultations under Article 12.2; the availability of the Chairperson or appropriate designee to serve as facilitator or mediator; and the informal and non-prejudicial nature of such consultations.

7. The United States fully supports greater use of this informal consultative mechanism as a way of resolving differences on SPS issues and, in some cases, of avoiding protracted formal dispute resolution proceedings.

May 28, 1998